



1 appeal claiming that the housing assignment was a threat to his safety and security  
2 because of the violent nature of the racially volatile general population and his disabled  
3 status. He asked to be transferred to medical facility. Appeals Coordinator Ruisi told  
4 Plaintiff that she had only ever recommended two medical transfers and would not  
5 recommend one for Plaintiff, because he was thirty-nine years old and African American,  
6 and that there are dangers that go along with incarceration. She told Plaintiff the first  
7 things she considers in terms of transfer requests is the inmate's age and ethnicity, and  
8 that she transfers Caucasian men aged fifty-five and older, "never an African American  
9 or Hispanic American--unless they are 'terminal.'" She then asked Plaintiff whether he  
10 had thought about his victim's right to safety and security, and told Plaintiff she would  
11 not recommend a transfer for him just because he felt unsafe in general population.

12 Plaintiff eventually sought State habeas corpus relief, which first was denied by  
13 Judge Robert Moony at the superior court, who found that even though Plaintiff is  
14 mobility impaired, he had failed to state a prima facie claim for relief. In an order dated  
15 September 18, 2003, the judge concluded: "Prison is a dangerous environment but the  
16 institution determined [Oden] is appropriately housed in the [Disability Placement  
17 Program] facility. If [Oden] has an immediate safety concern, he should notify prison  
18 staff." Pl.'s Compl., Ex. W1. On January 23, 2004, the California Court of Appeal  
19 denied Plaintiff's petition for habeas relief on the ground that he was appropriately being  
20 housed at a Level IV facility and there was no showing of deliberate indifference to his  
21 medical or safety concerns. *Id.*, Ex. Y1. On September 1, 2004, the California Supreme  
22 Court summarily denied Plaintiff's petition for habeas relief, but Justice Kennard wrote  
23 that she was of the opinion that the petition should be granted. *Id.*, Ex. 01.

## 24 DISCUSSION

### 25 I. MOTION TO DISMISS

#### 26 A. Standard of Review

27 Defendant Lamarque moves to dismiss the complaint under Rule 12(b)(6) of the  
28 Federal Rules of Civil Procedures on the ground that it fails to state a claim upon which

1 relief may be granted. Dismissal for failure to state a claim is a ruling on a question of  
2 law. *Parks School of Business, Inc., v. Symington*, 51 F.3d 1480, 1483 (9th Cir. 1995).  
3 "[A] complaint should not be dismissed for failure to state a claim unless it appears  
4 beyond doubt that the plaintiff can prove no set of facts in support of his claim which  
5 would entitle him to relief." *Terracom v. Valley National Bank*, 49 F.3d 555, 558 (9th  
6 Cir. 1995) (quoting *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957)). The issue is not  
7 whether the plaintiff will ultimately prevail, but whether he is entitled to offer evidence  
8 to support his claim. *Usher v. City of Los Angeles*, 828 F.2d 556, 561 (9th Cir. 1987).

9 Allegations of fact in the complaint must be taken as true and construed in the  
10 light most favorable to the non-moving party. *Symington*, 51 F.3d at 1484. But  
11 conclusory allegations without more are insufficient to defeat a motion to dismiss for  
12 failure to state a claim, *McGlinchy v. Shell Chemical Co.*, 845 F.2d 802, 810 (9th Cir.  
13 1988). The court "is not required to accept legal conclusions cast in the form of factual  
14 allegations if those conclusions cannot reasonably be drawn from the facts alleged."  
15 *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754-55 (9th Cir. 1994).

16 Review is limited to the contents of the complaint, *id.*, including documents  
17 physically attached to the complaint or documents the complaint necessarily relies on and  
18 whose authenticity is not contested, *Lee v. County of Los Angeles*, 250 F.3d 668, 688 (9th  
19 Cir. 2001).

20 B. Legal Claims

21 The Eighth Amendment requires that prison officials take reasonable measures to  
22 guarantee the safety of prisoners. *Farmer v. Brennan*, 511 U.S. 825, 832 (1994). In  
23 particular, prison officials have a duty to protect prisoners from violence at the hands of  
24 other prisoners. *Id.* at 833; *Hearns v. Terhune*, 413 F.3d 1036, 1040 (9th Cir. 2005);  
25 *Hoptowit v. Ray*, 682 F.2d 1237, 1250 (9th Cir. 1982); *Gillespie v. Civiletti*, 629 F.2d  
26 637, 642 & n.3 (9th Cir. 1980). The failure of prison officials to protect inmates from  
27 attacks by other inmates or from dangerous conditions at the prison violates the Eighth  
28 Amendment only when two requirements are met: (1) the deprivation alleged is,

objectively, sufficiently serious; and (2) the prison official is, subjectively, deliberately indifferent to inmate safety. *Farmer*, 511 U.S. at 834; *Hearns*, 413 F.3d at 1040-41.

A prisoner need not wait until he is actually assaulted to state a claim and obtain relief. *See Farmer*, 511 U.S. at 845; *Woodhous v. Virginia*, 487 F.2d 889, 890 (4th Cir. 1973); *Stickney v. List*, 519 F. Supp. 617, 620 (D. Nev. 1981). A prison official need not "believe to a moral certainty that one inmate intends to attack another at a given place at a time certain before that officer is obligated to take steps to prevent such an assault." *Berg v. Kincheloe*, 794 F.2d 457, 459 (9th Cir. 1986). If the court finds the Eighth Amendment's objective and subjective requirements satisfied, it may grant appropriate relief. *See Farmer*, 511 U.S. at 845-46. Allegations in a pro se complaint sufficient to raise an inference that the named prison officials acted with deliberate indifference--i.e, that they knew that plaintiff faced a substantial risk of serious harm and disregarded that risk by failing to take reasonable measures to abate it--states a "failure-to-protect" claim. *See Hearns*, 413 F.3d at 1041-42

### C. Analysis

Defendant Lamarque maintains that, as a matter of law, Plaintiff cannot state a claim for deliberate indifference to his safety because (1) he has alleged no facts which support a claim for supervisorial liability, (2) he cannot maintain a suit for equitable relief because of a pending class action, and (3) Lamarque is entitled to qualified immunity.

#### 1. Supervisorial Liability

In its order of service the Court wrote:

In this case, Plaintiff has set forth sufficient facts to assert a claim for deliberate indifference to his safety in failing to place him on a facility that is appropriate to his physical limitations. Although Plaintiff's complaint with regard to this claim (ground one in the complaint) does not identify the official that he claims is responsible, his complaint names Warden Lamarque as a Defendant and it can be fairly inferred that Lamarque is the proper Defendant with regard to this claim.

Order at 3.

Defendant Lamarque argues that Plaintiff has not asserted grounds for

1 supervisory liability because he has alleged only that Lamarque was serving as the  
2 warden at SVSP at the time Plaintiff was placed in the general population, and that  
3 Lamarque "apparently instructed the Appeals Coordinator ... [to] change the theme of  
4 petitioner's appeal from 'safety and security' to that of a non-existing medical transfer."  
5 Pl.'s Compl. at 4-5.

6 In response, citing to page 60 of his complaint, Plaintiff states that he sent his  
7 administrative appeal directly to Lamarque along with a letter, which was stamped  
8 "Received on April 15, 2003, " in which he asked Lamarque for help in resolving his  
9 housing issue. However, Lamarque did not respond or act on his concerns.

10 A supervisor may be liable under § 1983 upon a showing of (1) personal  
11 involvement in the constitutional deprivation or (2) a sufficient causal connection  
12 between the supervisor's wrongful conduct and the constitutional violation. *Redman v.*  
13 *County of San Diego*, 942 F.2d 1435, 1446 (9th Cir. 1991) (en banc) (citation omitted).  
14 A supervisor therefore generally "is only liable for constitutional violations of his  
15 subordinates if the supervisor participated in or directed the violations, or knew of the  
16 violations and failed to act to prevent them." *Taylor v. List*, 880 F.2d 1040, 1045 (9th  
17 Cir. 1989). Evidence that a prison supervisor was personally involved in an  
18 unconstitutional transfer and denied all appeals of the transfer, for example, may suffice.  
19 *See Hamilton v. Endell*, 981 F.2d 1062, 1067 (9th Cir. 1992); *see also Watkins v. City of*  
20 *Oakland*, 145 F.3d 1087, 1093 (9th Cir.1998) (supervisor who signed internal affairs  
21 report dismissing complaint against officer despite evidence of officer's use of excessive  
22 force may be liable for damages). To be liable for unsafe prison conditions under the  
23 Eighth Amendment, a supervisor must have known that there was a substantial risk that  
24 his actions would cause inmates harm, and there must be a causal connection between the  
25 supervisor's actions and the plaintiff's harm. *See Jeffers v. Gomez*, 267 F.3d 895, 914-16  
26 (9th Cir. 2001).

27 Here, the allegations in Plaintiff's complaint, along with documents physically  
28 attached thereto (such as Plaintiff's state habeas corpus petitions and the Director's Level

1 Decision denying Plaintiff's appeal, which was copied to "Warden, SVSP") are sufficient  
2 to state a claim for supervisorial liability against Defendant Lamarque. Accordingly, the  
3 motion to dismiss on this ground is denied.

4 2. Pending Class Action

5 Defendant maintains that Plaintiff should not be allowed to proceed with his claim  
6 for equitable relief because the class action suit of *Armstrong v. Davis*, No. C 94-2307  
7 CW (N.D. Cal.), which pertains to accommodations for disabled prisoners within the  
8 California Department of Corrections, is in the remedial stage under the supervision of  
9 the court. Therefore, Plaintiff must make his equitable claim for relief through the  
10 *Armstrong* class representative and may not maintain an individual action.

11 Plaintiff asserts that his injunctive relief claim does not fall under *Armstrong*  
12 because it seeks relief which will ensure his safety in a Level IV institution, and not  
13 medical relief or accommodation.

14 Defendant replies that under *Armstrong* Plaintiff is appropriately housed at a  
15 Level IV institution with a program for disabled prisoners, and that he does not have a  
16 right to be transferred elsewhere.

17 Individual suits for injunctive and equitable relief from alleged unconstitutional  
18 prison conditions cannot be brought where there is a pending class action suit involving  
19 the same subject matter. *See McNeil v. Guthrie*, 945 F.2d 1163, 1165 (10th Cir. 1991);  
20 *Gillespie v. Crawford*, 858 F.2d 1101, 1103 (5th Cir. 1988) (en banc). "Individual  
21 members of the class and other prisoners may assert any equitable or declaratory claims  
22 they have, but they must do so by urging further actions through the class representative  
23 and attorney, including contempt proceedings, or by intervention in the class action." *Id.*  
24 Only where a plaintiff brings an action for equitable relief on the same claims involved  
25 in the class action is dismissal appropriate. *Id.* at 1102.

26 *Armstrong* is a class action pertaining to medical care and accommodations for  
27 disabled prisoners. Although Plaintiff is disabled, he does not seek medical care or  
28 accommodation for his disability. Rather, he maintains that his housing situation creates

1 an undue danger to his physical safety and security. At this stage of the proceedings, the  
2 facts have not been developed sufficiently for the Court to say that Plaintiff's claim for  
3 equitable relief must be resolved under *Armstrong*. Accordingly, the motion to dismiss  
4 on this ground is denied.

5 3. Qualified Immunity

6 Defendant argues that he is entitled to qualified immunity because Plaintiff has  
7 failed to show how his conduct violated Plaintiff's constitutional rights. That is, even  
8 assuming that Defendant Lamarque had anything to do with Plaintiff's housing, he was  
9 merely following the departmental procedures in place when Plaintiff was given his  
10 housing assignment. As such, even if there was some violation of prison policy, that  
11 policy violation does not rise to the level of a § 1983 violation.

12 Plaintiff argues that because of the level of ongoing violence in the general  
13 population at SVSP, a reasonable prison official in Defendant Lamarque's position would  
14 know that putting somebody in Plaintiff's physical condition in the general population  
15 amounted to deliberate indifference to his safety.

16 Deliberate indifference may be shown by the existence of a "pervasive risk of  
17 harm to inmates from other prisoners" at a given institution, and the failure by prison  
18 officials to reasonably respond to that risk. *See Martin v. White*, 742 F.2d 469, 474 (8th  
19 Cir. 1984). While a "pervasive risk of harm" cannot generally be shown by pointing to a  
20 single incident or isolated event, it may be established by much less than proof of a reign  
21 of violence and terror in the particular institution. *See id.* Further, it is not necessary to  
22 show that all prisoners suffer a pervasive risk of harm. Rather, it is enough that an  
23 identifiable group of prisoners do, if the complainant is a member of that group. *See id.*

24 The Court finds that Defendant Lamarque has not established that, as a matter of  
25 law, he is entitled to qualified immunity on Plaintiff's deliberate indifference claim.  
26 Accordingly, the motion to dismiss on this ground is denied.

27 II. DEFENDANT RUISI

28 In its order of service the Court found Plaintiff stated a cognizable claim for relief

1 against Defendant SVSP Appeals Coordinator Ruisi and directed the United States  
2 Marshal to serve her with a summons and complaint. The court file shows that service  
3 by mail was attempted on April 4, 2005, but as of July 27, 2005, no acknowledgment of  
4 service had been received from Ruisi.

5 Federal Rule of Civil Procedure 4(m) contemplates that service of process  
6 normally will be accomplished within four months of the filing of the complaint.  
7 Although the Court can order the United States Marshal to serve process on a defendant  
8 when the plaintiff is indigent, it is the plaintiff's responsibility to provide a name and  
9 address for each defendant to be served. Both the Court and the California Department  
10 of Corrections recognize, however, that prisoners proceeding pro se will often be unable  
11 to obtain forwarding addresses for prison employees. Accordingly, a system has been  
12 established by which the California Department of Corrections will provide to the Court,  
13 under seal, a forwarding address for the defendant if the Department is in possession of  
14 such. Therefore, in accord with this system, the Court's docket clerk shall mail an  
15 address inquiry letter to the designated contact-person at the California Department of  
16 Corrections. The letter shall ask for the proper service address for Defendant Ruisi to be  
17 provided to the Court so that the Court can then order the United States Marshal to make  
18 another attempt to serve the complaint on Defendant Ruisi.

### 19 CONCLUSION

20 For the foregoing reasons the Court orders as follows,

21 1. Defendant Lamarque's motion to dismiss the complaint is DENIED. (Docket  
22 no. 10.)

23 Within **sixty (60) days** from the date of this order, Defendant Lamarque shall file a  
24 motion for summary judgment or other dispositive motion. The motion shall be supported by  
25 adequate factual documentation and shall conform in all respects to Federal Rule of Civil  
26 Procedure 56. If Defendant is of the opinion that this case cannot be resolved by summary  
27 judgment, he shall so inform the Court prior to the date the summary judgment motion is due.  
28 All papers filed with the Court shall be promptly served on Plaintiff.



1 Plaintiff's opposition to the dispositive motion shall be filed with the Court and served  
 2 on Defendant no later than **sixty (60) days** from the date on which he is served with the  
 3 dispositive motion. The Ninth Circuit has held that the following notice should be given to pro  
 4 se plaintiffs:

5 The defendants have made a motion for summary judgment by which they seek  
 6 to have your case dismissed. A motion for summary judgment under Rule 56 of  
 7 the Federal Rules of Civil Procedure will, if granted, end your case.  
 8 Rule 56 tells you what you must do in order to oppose a motion for summary  
 9 judgment. Generally, summary judgment must be granted when there is no  
 10 genuine issue of material fact -- that is, if there is no real dispute about any fact  
 11 that would affect the result of your case, the party who asked for summary  
 12 judgment is entitled to judgment as a matter of law, which will end your case.  
 13 When a party you are suing makes a motion for summary judgment that is  
 14 properly supported by declarations (or other sworn testimony), you cannot simply  
 15 rely on what your complaint says. Instead, you must set out specific facts in  
 16 declarations, depositions, answers to interrogatories, or authenticated documents,  
 17 as provided in Rule 56(e), that contradict the facts shown in [Defendants']  
 18 declarations and documents and show that there is a genuine issue of material  
 19 fact for trial. If you do not submit your own evidence in opposition, summary  
 20 judgment, if appropriate, may be entered against you. If summary judgment is  
 21 granted in favor of [Defendants], your case will be dismissed and there will be no  
 22 trial.

23 See Rand v. Rowland, 154 F.3d 952, 963 (9th Cir. 1998) (en banc). Plaintiff is advised to read  
 24 Rule 56 of the Federal Rules of Civil Procedure and Celotex Corp. v. Catrett, 477 U.S. 317  
 25 (1986) (party opposing summary judgment must come forward with evidence showing triable  
 26 issues of material fact on every essential element of his claim). Plaintiff is cautioned that  
 27 because he bears the burden of proving his allegations in this case, he must be prepared to  
 28 produce evidence in support of those allegations when he files his opposition to Defendant's  
 dispositive motion. Such evidence may include sworn declarations from himself and other  
 witnesses to the incident, and copies of documents authenticated by sworn declaration. Plaintiff  
 is advised that if he fails to submit declarations contesting the version of the facts contained in  
 Defendant's declarations, Defendant's version may be taken as true and the case may be decided  
 in Defendant's favor without a trial. Plaintiff will not be able to avoid summary judgment  
 simply by repeating the allegations of his complaint.

If Defendant wishes to file a reply brief, he shall do so no later than **fifteen (15) days**  
 after the date Plaintiff's opposition is filed. The motion shall be deemed submitted as of the date

1 the reply brief is due. No hearing will be held on the motion unless the Court so orders at a later  
2 date.

3 2. Discovery may be taken in accordance with the Federal Rules of Civil Procedure.  
4 Leave of Court pursuant to Rule 30(a)(2) is hereby granted to Defendants to depose Plaintiff and  
5 any other necessary witnesses confined in prison.

6 3. All communications by Plaintiff with the Court must be served on Defendants, or  
7 their counsel once counsel has been designated, by mailing a true copy of the document to  
8 Defendants or their counsel.


9 4. It is Plaintiff's responsibility to prosecute this case. Plaintiff must keep the Court  
10 informed of any change of address and must comply with the Court's orders in a timely fashion.  
11 Failure to do so may result in the dismissal of this action for failure to prosecute pursuant to  
12 Federal Rule of Civil Procedure 41(b).

13 5. Extensions of time are not favored, though reasonable extensions will be granted.  
14 However, the party making a motion for an extension of time is not relieved from his or her duty  
15 to comply with the deadlines set by the Court merely by having made a motion for an extension  
16 of time. The party making the motion must still meet the deadlines set by the Court until an  
17 order addressing the motion for an extension of time is issued. Any motion for an extension of  
18 time must be filed no later than **fifteen (15) days** prior to the deadline sought to be extended.

19 6. The Clerk of the Court shall mail a letter of address inquiry pertaining to  
20 Defendant Ruisi to the California Department of Corrections, as set forth above.

21 IT IS SO ORDERED.

22 DATED: February 16, 2006

23   
24 JEFFREY S. WHITE  
25 United States District Judge  
26  
27  
28